

SURFACE TRANSPORTATION  
BOARD SHOULD NOT ACT ON  
AGREEMENTS

**HON. NICK J. RAHALL II**

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 6, 1998*

Mr. RAHALL. Mr. Speaker, in 1996, the Surface Transportation Board was established within the Department of Transportation as a result of Congressional action to terminate the Interstate Commerce Commission. The STB is an adjudicatory body with jurisdiction over certain surface transportation economic regulatory matters which were formally under ICC jurisdiction. The Board consists of three members and herein lies the crux of the problem. Today it consists of two members. By the end of the year, it will consist of only one member.

This is not a situation the Congress envisioned when establishing the STB and enacting provisions such as those found under section 13703 of Title 49 of the United States Code. And I state this as the ranking Democrat on the Subcommittee on Surface Transportation which had a major role in drafting the ICC Termination Act of 1995.

The provisions of section 13703 relate to the grant of antitrust immunity for certain collective activities pertaining to the motor carrier industry. In enacting the 1995 Act, and specifically section 13703 of Title 49, Congress retained immunity for classification making, the collective establishment of through routes and joint rates, rates for the transportation of household goods, general rate adjustments, rules and divisions. These activities have historically had antitrust immunity as being in the public interest and Congress had the good sense not to change that arrangement.

However, the 1995 Act contained a caveat. While immunity would be retained for an initial three year-period, which expires December 1998, the Act requires that the Board continue the immunity beyond the three-year period unless it finds that renewal is not in the public interest. In other words, unless the Board affirmatively determines that there is some public interest basis for not continuing the immunity which Congress provided for in the statute, the immunity is to be renewed beyond the initial three year period.

It is now being left up to a single Board member to make these determinations. In this regard, there is some question as to whether or not the board, when comprised of a single member, even has the authority to make any determinations of this nature. Apparently, the matter is not well settled. But in any event, any action taken by a STB comprised of a single member will be the subject of controversy if not litigation.

As such, I would advise the STB not to take any actions on matters which fall within the purview of section 13703(c) of Title 49 while it lacks a quorum of its statutorily designated membership. Indeed, the clear intent of Congress in enacting the 1995 Act was for the grants of antitrust immunity to continue.

We knew then, as we know now, that the efficient operation of the motor carrier industry, and its ability to serve both shippers and consumers alike, depends on the continuation of commodity classifications. Clearly, motor carriers could not, and would not, meet collectively without immunity and it is a fact that no

system other than the National Classification Committee Agreement provides for the grouping of products with comparable characteristics, or the separation of products that are dissimilar, for transportation purposes.

And we knew then, as we know now, that the motor carrier industry remains extremely competitive using the collective ratemaking process authorized by the immunity to provide procompetitive services to shippers. These principally regional motor carriers, by benefit of the immunity, have been able to establish together rates and routes for essentially multi-regional services, and these services compete with the single line services of the large carriers. In this way, these carriers, who compete with each other for regional and inter-regional freight, effectively join together to offer shippers competitive, and often times more cost effective, services. That these carriers are continuing to provide shippers with these services in a market of extreme competition is testimony to the positive competitive effect of the immunity.

I would note that the household goods industry as we know it also depends on the antitrust immunity provided by law.

For these reasons, I believe the public interest is best served by the continuation of the agreements in existence today, and that the public would be ill-served by an STB, comprised of a single member, taking any actions which would jeopardize the efficiencies embodied by the status quo.

A DANGEROUS GAME IN IRAQ

**HON. HOWARD L. BERMAN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 6, 1998*

Mr. BERMAN. Mr. Speaker, one of the most persistent and dangerous foreign policy dangers that America faces today is in Iraq where Saddam Hussein persists in frustrating efforts by the United Nations to eliminate his program to develop weapons of mass destruction and the means to deploy them.

I ask unanimous consent that an editorial, entitled "A Dangerous Poker Game With Iraq," which appeared in the October 4, 1998, issue of the New York Times be printed in the RECORD. The editorial applauds the efforts of Major Scott Ritter to warn the world about Saddam's weapons program. The editorial rightly calls on the United States to intensify efforts to force Saddam to comply with UN resolutions. As the editorial states, "only the credible threat of force can keep Iraq from resuming its weapons programs."

This is a stark but true statement with dire consequences. Neither this Congress nor this Administration is as focused today as they should be on the foreign policy crises in the Middle East, Asia, or Russia, which are at our gates. We should be paying more attention before these problems move within our walls. I urge all my colleagues to read this editorial.

A DANGEROUS POKER GAME WITH IRAQ

In altering its approach to Iraq, the Clinton Administration is blundering into a policy that allows Saddam Hussein to rebuild a deadly arsenal of chemical and biological weapons. That makes it all the more repugnant that the Administration is trying to discredit and intimidate Scott Ritter, a

former top United Nations weapons inspector in Iraq who is rightly sounding an alarm about the developments in Baghdad.

Seven years of economic sanctions and contested arms inspections in Iraq since the end of the Persian Gulf war have fatigued the Security Council. Mr. Hussein has several times manipulated the simmering confrontation to force Washington to reinforce its military presence in the region, at considerable expense. But for all the frustration, the clear lesson from these encounters is that only the credible threat of force can keep Iraq from resuming its weapons programs.

Washington has now muted that threat even as Mr. Hussein has blocked the most critical avenues of inspection. Though cameras and sensors continue to operate at suspected weapons sites, nearly all spot inspections have been banned by the Iraqis. Baghdad's scientists and engineers are essentially free to concoct biological and chemical toxins at unmonitored sites and install them in bombs and missiles. The Clinton Administration, in effect, has suspended its effort to keep Iraq from rearming.

The Clinton Administration maintains that its restraint has allowed the Security Council to deal directly with Iraq, giving members a better appreciation of Mr. Hussein's defiance. The Council, in turn, has rebuffed Iraqi appeals to lift the embargo on most oil sales. That is fine, but the embargo is just one piece of the puzzle and the Security Council shows little desire to deal with the rest. Even without oil revenues, Mr. Hussein has more than enough money to finance new weapons. Absent aggressive inspection, he will do just that.

Mr. Ritter, an American who directed and conducted inspections in Iraq, has correctly warned that the world has largely lost its ability to hunt down Iraqi weapons projects. He resigned in protest, disclosing that the United States blocked several inspections to avoid a new confrontation with Baghdad. Mr. Ritter also reported that many of the best intelligence tips about Iraqi activities came from Israel, an understandable source given Israel's vulnerability to Iraqi attack.

Mr. Ritter has been rewarded for this truth telling with a stern warning from the United Nations, a Federal criminal investigation into his association with Israel and the ludicrous assertion of American officials that he does not know what he is talking about. This treatment is an embarrassment to the country.

Every day that passes without spot inspections gives Iraq more time to rearm. While Washington is toasting its success in uniting the Security Council behind the embargo, Mr. Hussein is busy building weapons that can threaten the entire Middle East.

TRIBUTE TO DOUGLAS A. KAPLAN

**HON. VIC FAZIO**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 6, 1998*

Mr. FAZIO of California. Mr. Speaker, I rise today to recognize and commend Douglas A. Kaplan who is retiring after serving sixteen years as Public Guardian/Public Administrator for the County of Yolo.

Since his days as a student, Doug has shown an interest in helping those who are less fortunate in our society. At the University of California at Davis, from which he graduated in 1978, he helped establish the Adopt a Grandparent Program. Doug ran for the office of Public Guardian/Public Administrator in